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11 *General Electric Company and*  
*GE Grid Solutions, LLC*

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 In re:  
16 PG&E CORPORATION  
17 - and -  
18 PACIFIC GAS AND ELECTRIC  
COMPANY,  
19 Debtors.

Bankruptcy Case  
No. 19-30088 (DM)

Chapter 11  
(Lead Case)  
(Jointly Administered)

**GENERAL ELECTRIC COMPANY AND  
GE GRID SOLUTIONS LLC'S  
OBJECTION TO THE OFFICIAL  
COMMITTEE OF TORT CLAIMANTS'  
MOTION TO ESTABLISH PROCEDURES  
FOR DISCOVERY PRECEDING PLAN  
CONFIRMATION**

- 22 ☐ Affects PG&E Corporation  
23 ☐ Affects Pacific Gas and Electric Company  
24 ☒ Affects both Debtors

25 *\* All papers shall be filed in the Lead Case, No.*  
*19-30088 (DM).*

Hearing

Date: March 10, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: Courtroom 17  
450 Golden Gate Ave., 16th Fl.  
San Francisco, CA 94102

1 General Electric Company (“GE”) and GE Grid Solutions, LLC (“GE Grid Solutions”), as  
2 non-parties to the above-captioned Chapter 11 cases, submit this Objection to The Official  
3 Committee of Tort Claimants’ Motion to Establish Procedures for Discovery Preceding Plan  
4 Confirmation, Dkt. No. 5840 (the “Procedures Motion”). This Objection is supported by the  
5 accompanying Declaration of David S. Torborg.

### 6 PRELIMINARY STATEMENT

7 GE and GE Grid Solutions are two of more than 120 PG&E contractors to receive  
8 identical Rule 45 subpoenas from the Tort Claimants Committee (the “TCC”). The subpoenas to  
9 GE and GE Grid Solutions (the “Subpoenas”) seek, for a seven-year period, broad categories of  
10 documents related to GE’s and GE Grid Solution’s contracts with PG&E, as well as extensive  
11 information concerning GE’s and GE Grid Solution’s insurance policies. The Subpoenas are not  
12 tied to any “adversary proceeding” or “contested matter” pending before this Court, as required  
13 by Rule 45 of the Federal Rules of Civil Procedure (the “Federal Rules”) and Rule 9002(1) of the  
14 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). On that basis alone, the Court  
15 should deny the Procedures Motion.

16 Nor do the Subpoenas seek information relevant to any plan confirmation proceeding,  
17 contested or otherwise. Rather, the contractor subpoenas attempt to use these bankruptcy  
18 proceedings to investigate potential *new* claims that would be assigned to the TCC-controlled Fire  
19 Victim Trust created under a proposed plan of reorganization (Dkt. No. 5590) (the “Plan”). The  
20 TCC has admitted that it has no basis today to believe there are factually-supported, cognizable  
21 claims against GE or GE Grid Solutions related to the wildfires precipitating PG&E’s bankruptcy.

22 In an apparent effort to avoid judicial scrutiny, the TCC now proposes a remarkable set of  
23 “procedures” to adjudicate challenges to the contractor subpoenas. The TCC’s “streamlined”  
24 process for an “aggregate” adjudication of those challenges would override the protections  
25 provided in the Federal Rules and well-established case law. Indeed, the TCC’s proposal—which  
26 would turn the entire process over to a Special Master—collapses at its first step because Special  
27 Masters are expressly *not* authorized in bankruptcy cases. *See* Fed. R. Bankr. P. 9031.

28 The Court should reject the TCC’s Procedures Motion.

## BACKGROUND

GE and GE Grid Solutions have provided, and continue to provide, various products and services to PG&E, including transformers, power sensing equipment, capacitors, monitoring and diagnosis equipment, UR relays, and software; services include Grid Automation, consulting services and engineering, procurement and construction services. On or around January 21, 2020, the TCC issued subpoenas to GE and GE Grid Solutions. The Subpoenas appear identical in every respect to subpoenas that the TCC issued to more than 120 other PG&E contractors.<sup>1</sup> Each contains fifteen broad requests seeking documents “for the time period 2013 to the present.” Each seeks “any and all contracts” and all “indemnification and/or hold harmless agreements” between GE/GE Grid Solutions and PG&E, as well as any “reports, analyses, summaries, or descriptions” concerning that work. Request Nos. 1-3. Each seeks “all documents,” including policies, applications, declarations, policies and endorsements, related to any insurance policy covering GE or GE Grid Solutions, regardless of whether those policies relate to their work for PG&E. Request Nos. 4-15.

Counsel for GE and GE Grid Solutions contacted counsel for the TCC on February 3 and 5, 2020 to discuss the subpoenas, including the procedure under which they were issued and the relevance of the information sought. Torborg Decl. ¶ 4. TCC counsel asserted that the Subpoenas were being issued in connection with a “contested” plan confirmation hearing. Torborg Decl. ¶ 4. Counsel further asserted that the Subpoenas sought information related to potential fire-related claims against contractors that had been assigned to a victim’s trust under a TCC-supported Plan. *Id.* ¶ 5

When asked, TCC counsel was unable to identify specifically any GE or GE Grid Solutions product or service that could potentially be implicated in any of the fires precipitating PG&E’s bankruptcy or related liabilities of PG&E. *Id.* ¶ 5. Rather, counsel indicated that GE and GE Grid Solutions were on a list of contractors produced by the Debtors and provided general information regarding some of the products and services that GE and GE Grid Solutions

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<sup>1</sup> The subpoenas served on GE and GE Grid Solutions are attached as **Exhibits A and B** to the Declaration of David S. Torborg (“Torborg Decl.”), filed contemporaneously herewith.

1 had provided to the Debtors. *Id.* ¶ 5. TCC counsel provided a document titled “Fire Circuits and  
2 Origin Locations” (**Exhibit C**) and invited GE and GE Grid Solutions to determine whether any  
3 of their products or services were provided at these locations. TCC counsel further stated that the  
4 TCC would consider withdrawing the Subpoenas if GE and GE Grid Solutions could verify that  
5 none of their products or services were used or provided at those locations. *Id.* ¶ 6.<sup>2</sup> Because GE  
6 and GE Grid Solutions products and services are sold to PG&E in bulk and as inventory, neither  
7 GE nor GE Grid Solutions are presently aware, nor able to confirm, any connection between their  
8 products and services and the fires at issue, and they have no effective way of determining where  
9 PG&E deployed their equipment throughout its system. *Id.* ¶ 7. Presumably, that information is  
10 in the hands of PG&E, and should be sought from the party best able to produce such  
11 information, namely, PG&E. *See Soto v. Castlerock Farming and Transport, Inc.*, 282 F.R.D.  
12 492, 505 (E.D.Cal. 2012) (“Where plaintiffs have not shown they attempted to obtain documents  
13 from the defendant in an action prior to seeking the documents from a non-party, a subpoena  
14 duces tecum places an undue burden on a non-party.”).

15 TCC counsel agreed to provide GE and GE Grid Solutions a 30-day extension (until  
16 March 5, 2020) to respond to the Subpoenas and advised that the TCC expected to file a motion  
17 to establish a “process” for adjudicating objections to the contractor subpoenas. *Id.* ¶ 8. The  
18 TCC filed its Procedures Motion on February 19, 2020. ECF Dkt. No. 5840 at 1. On February  
19 25, 2020, TCC counsel granted GE and GE Grid Solution’s request for an extension to respond to  
20 the Subpoenas until ten days after the Court rules on the Procedures Motion. *Id.* ¶ 9.

## 21 **ARGUMENT**

### 22 **I. LEGAL STANDARD**

23 Rule 45, adopted by Bankruptcy Rule 9016, governs the Subpoenas. *See Fed. R. Bankr.*  
24 P. 9016. Under Rule 45, the discovery sought must be relevant to the claims and defenses at issue  
25 in a proceeding, not privileged, and “proportional to the needs of the case.” Fed. R. Civ. P.  
26 26(b)(1). “The Ninth Circuit has long held that nonparties subject to discovery requests deserve

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27 <sup>2</sup> While the document purports to provide an “Origin Location” of various fires, it does not  
28 indicate the particular cause of the fire—including what types of products were implicated—at any of  
the listed locations.

1 extra protection from the courts.” *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*,  
2 No. 09-CV-01967 CW (NC), 2012 WL 4846522, at \*2 (N.D. Cal. Aug. 7, 2012) (citing *United*  
3 *States v. C.B.S., Inc.*, 666 F.2d 364, 371–72 (9th Cir. 1982)).

4 Absent extraordinary circumstances or consent, a Rule 45 subpoena can only be enforced  
5 by a court for the district where compliance of the subpoena is required, which for document  
6 requests is “at a place within 100 miles of where the person resides, is employed, or regularly  
7 transacts business in person.” Fed. R. Civ. P. 45(c)(2), (f). If the recipient of a Rule 45 subpoena  
8 serves objections within 14 days after the subpoena is served (or within the time period of any  
9 extension), the serving party has the burden of moving the court for the district where compliance  
10 is required for an order compelling production. Fed. R. Civ. P. 45(d)(2)(B)(i). The responding  
11 party also has the option of moving to quash the subpoena. Fed. R. Civ. P. 45(d)(3).

12 **II. THE RULE 45 SUBPOENAS ARE PROCEDURAL IMPROPER BECAUSE THEY**  
13 **WERE NOT SERVED IN ANY PENDING “ACTION.”**

14 Before a party may issue a Rule 45 subpoena, “there must be an ‘action’ pending in order  
15 for a subpoena to be issued.” *In re Patel*, No. 16-65074-LRC, 2017 WL 377943, at \*2 (Bankr.  
16 N.D. Ga. Jan. 26, 2017) (citing *Application of Royal Bank of Canada*, 33 F.R.D. 296 (S.D.N.Y.  
17 1963)); Fed. R. Civ. P. 45(a)(2) (Rule 45 subpoenas “must issue from the court where the action  
18 is pending”). Bankruptcy Rule 9002(1) defines “action” or “civil action”—as used in the Federal  
19 Rules of Civil Procedure—as “an adversary proceeding or, when appropriate, a contested petition,  
20 or proceedings to vacate an order for relief or to determine any other contested matter.”  
21 “Adversary proceedings” are specifically defined, *see* Fed. R. Bankr. P. 7001, while “contested  
22 matters” include any request for relief in the main bankruptcy proceeding that is contested.

23 Here, the TCC’s Subpoenas do not identify an adversary proceeding, *see* Torborg Decl.,  
24 Exs. A & B (leaving blank sections for “adversary proceeding”). Nor do the Subpoenas identify  
25 any contested matter. The Procedures Motion asserts that the Subpoenas are directed to issues  
26 “central to the final stages of the ongoing plan confirmation proceedings ....” Dkt. No. 5840 at 1.  
27 But a confirmation proceeding by itself is not a contested matter. Rather, only “[a]n objection to  
28 confirmation” of a plan qualifies as a contested matter. *See* Fed. R. Bankr. P. 3020(b)(1); *Bullard*

1 v. *Blue Hills Bank*, 135 S. Ct. 1686, 1694 (2015) (“An objection to a plan initiates a contested  
2 matter.”); *In re Rosa*, 495 B.R. 522, 525 (Bankr. D. Haw. 2013) (explaining that “[t]he filing of a  
3 plan does not ... initiate a contested matter” and “[p]lan confirmation becomes a contested matter  
4 only when an objection is filed”).

5 So far as GE and GE Grid Solutions are aware, no objections to the Plan have been filed.  
6 The Procedures Motion suggests no such objections currently exist. *See* Dkt. No. 5840 at 3  
7 (arguing requested documents may be central to “*any* Plan objections going to the value of the  
8 Assigned Claims”) (emphasis added).

9 Because they were not issued in connection with any qualifying “action,” the Procedures  
10 Motion should be denied.

11 **III. THE SUBPOENAS IMPROPERLY SEEK TO “INVESTIGATE” NEW**  
12 **“POTENTIAL CLAIMS,” NOT INFORMATION RELEVANT TO ANY**  
13 **POTENTIAL “CONTESTED” PLAN CONFIRMATION HEARING.**

14 Even if objections to the Plan were filed, the TCC fails to explain *how* the information  
15 sought in the Subpoenas would be relevant to any contested confirmation proceeding. The TCC  
16 says that it seeks to “better understand and assess the value of the Assigned Rights and Causes of  
17 Action (the ‘Assigned Claims’) for Plan confirmation purposes.” Dkt. No. 5840 at 2. But the  
18 TCC has *already accepted* the consideration its constituents would receive under the proposed  
19 plan, including as to the Assigned Claims. So even if the value of the Assigned Claims  
20 eventually “*may* be central in *any* Plan objections,” *id.* at 3 (emphasis added), the TCC fails to  
21 explain why *it* needs more information to value the Plan’s compensation package for fire victims.  
22 It has already agreed to support the plan through a Restructuring Support Agreement. On the face  
23 of TCC’s Subpoena requests, TCC has failed to establish or explain how GE or GE Grid  
24 Solutions have, or should have, a role in that process.<sup>3</sup>

25 <sup>3</sup> Even if one accepted the TCC’s highly questionable premise that the discovery sought by the  
26 contractor subpoenas was relevant to plan confirmation, the discovery should be deferred until any  
27 objections to the Plan have actually been filed and the disputed issues in any contested confirmation  
28 hearing have been identified and narrowed. It is impossible at this point to determine if the  
information requested in the contractor subpoenas is “relevant to any party’s claim or defense and  
proportional to the needs of the case,” as required under Rule 26(b)(1).

1 The real purpose of the Subpoenas, of course, is to initiate—at the Debtors’ expense—an  
2 “investigative process” that finds new “potential claims” for the Fire Victim Trust, Dkt. No. 5840  
3 at 3, including what insurance might be available to pay such claims.<sup>4</sup> That is not a proper use of  
4 Rule 45, which permits discovery only in actual cases and is not permitted “to conduct a fishing  
5 expedition in search of other potential defendants not related to this action.” *Specialized Bicycle*  
6 *Components, Inc. v. Barton*, No. C10-05725 HRL, 2011 WL 1599653, at \*2 (N.D. Cal. Apr. 28,  
7 2011) (internal quotations omitted). *Cf. Palumbo v. Shulman*, No. 97 Civ. 4314, 1998 U.S. Dist.  
8 LEXIS 11467, at \*15, 1998 WL 436367 (S.D.N.Y. July 24, 1998) (“Discovery is not to be used  
9 as ‘a hunting license to conjure up a claim that does not exist.’” (quoting *Avnet, Inc. v. Am.*  
10 *Motorists Ins. Co.*, 115 F.R.D. 588, 592 (S.D.N.Y.1987))). Indeed, even the meet-and-confer  
11 process triggered by issuing the subpoenas seems designed to enlist counsel for the subpoena  
12 recipients into the TCC’s investigation of potential claims.

#### 13 **IV. THE TCC’S PROPOSAL TO RESOLVE OBJECTIONS TO THE CONTRACTOR** 14 **SUBPOENAS VIOLATES THE BANKRUPTCY AND FEDERAL RULES.**

15 The TCC’s proposed approach to “streamline resolution of [objections to the contractor  
16 subpoenas] into one process,” Dkt. No. 5840, is untenable under the Bankruptcy and Federal  
17 Rules. Initially, the scores of objections that the TCC has received on its procedurally improper  
18 and overreaching contractor subpoenas is a problem of its own making. Any “streamlining”  
19 should have been done by the TCC on the front-end, before it dispatched more than 120  
20 subpoenas to seemingly every subcontractor to have provided particular types of products or  
21 services to PG&E. In any event, the TCC’s proposed approach is prohibited by the Bankruptcy  
22 and Federal Rules.

23 The TCC’s proposal that “[a] special master shall be appointed by the Court to resolve any  
24 disputes that require intervention . . . .,” Dkt. No. 5840 at 4, is not permitted by the Bankruptcy  
25 Rules. Bankruptcy Rule 9031—titled “Masters Not Authorized”—provides that “Rule 53  
26 F.R.Civ.P. does not apply in cases under the Code.” Fed. R. Bankr. P. 9031. The Advisory

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27 <sup>4</sup> The subpoenas ignore that “insurance policies of non-parties are not discoverable.” *See In*  
28 *re New England Compounding Pharmacy, Inc. Prod. Liab. Litig.*, MDL No. 13-2419-FDS, 2013 WL  
6058483, at \*11 (D. Mass. Nov. 13, 2013).



1 Committee Notes are Rule 9031 is explicit: “This rule precludes the appointment of masters in  
2 cases and proceedings under the Code.” Accordingly, the Court is simply not permitted to  
3 delegate adjudication of challenges to the contractor subpoenas to a Special Master.

4 The TCC’s proposal is also inconsistent with the Federal Rules. While Rule 83 allows a  
5 district court to “adopt and amend rules governing its practice,” those local rules “must be  
6 consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§ 2072  
7 and 2075 ....” Fed. R. Civ. P. 83. The Supreme Court adopted Rule 45 under 28 U.S.C. § 2072  
8 and the Bankruptcy Rules under 28 U.S.C. § 2075. Here, every aspect of the TCC’s proposed  
9 procedures is inconsistent with the Rule 45. Among other things:

- 10 • Under the TCC’s approach, a Special Master—instead of a district court where  
11 compliance is required—can command a third party to produce documents.<sup>5</sup>
- 12 • The TCC’s approach requires the third party to participate “in a meet-and-confer  
13 discussion over the phone with TCC counsel” before it submits an objection to the  
14 subpoena. That is not consistent with the approach set forth in Rule 45(d)(2)(B).
- 15 • The TCC’s approach eliminates the serving party’s responsibility to “move the  
16 court for the district where compliance is required for an order compelling  
17 production or inspection,” Rule 45(d)(2)(B)(i), and the third party’s right to  
18 submit a brief setting forth their points and authorities for objecting to the  
19 subpoena. The TCC replaces the ordinary procedure with a process by which the  
20 “Objecting Party may only include in the list a sentence or two briefly stating the  
21 basis for the objection” and cannot include “extensive argument or case law” or  
22 “any history of exchanges of emails, letters, etc.” Dkt. No. 5840 at 4.
- 23 • The TCC’s approach alters the normal time frames established in the Federal and  
24 Local Rules for adjudicating challenges to Rule 45 subpoenas.
- 25 • The TCC’s approach eliminates, by design, any individualized attention provided  
26 in Rule 45 to a third party’s objection to a subpoena, replacing it with an  
27 “aggregate” process by which the “TCC will aggregate all objections from all  
28 Objecting Parties that are pending at the time, and the TCC’s responses to same,  
into one list for the submission to the Special Master.” *Id.* at 5. “No briefing shall  
be included in the filing.” *Id.* The Special Master would then “set a telephonic  
hearing to resolve the list of objections and hear brief factual argument from  
Objecting Parties and the TCC.” *Id.*
- If the Special Master overrules an Objecting Party’s objections, “all responsive,  
non-privileged documents” must be produced within 14 days. The TCC’s

<sup>5</sup> The subpoenas to GE and GE Grid Solutions indicate the place for compliance is the offices  
of TCC’s counsel in Los Angeles, California.



1 approach provides no opportunity to review the Special Master's rulings.  
2 Dkt. No. 5840 at 4-5.

3 Even if a Special Master could be appointed in these bankruptcy proceedings, the TCC's  
4 proposed procedures are inconsistent with Federal Rule 53. Rule 53, which governs the use of  
5 Special Masters, provides that a court "may appoint a master only to ... perform duties consented  
6 to by the parties." Fed. R. Civ. P. 53(a)(1)(A). GE and GE Grid Solutions are not aware of  
7 anyone other than the TCC who has consented to use of a Special Master to resolve the contractor  
8 subpoenas, including, without limitation, the Subpoenas. Rule 53 further provides that a "party  
9 may file objections to—or a motion to adopt or modify—the master's order, report, or  
10 recommendations not later than 21 days after a copy is served, unless a court sets a different  
11 time." Fed. R. Civ. P. 53(f)(2). Unless otherwise stipulated otherwise, the court must conduct a  
12 de novo review of all findings of fact made or recommended by the master; conclusions of law  
13 are also subject to de novo review. *See* Fed. R. Civ. P. 53(f)(3)-(4). The TCC's proposal contains  
14 no provisions for objecting to or reviewing the Special Master's orders.

### 15 CONCLUSION

16 For the foregoing reasons, the Court should reject the TCC's Procedures Motion.

17 Dated: March 3, 2020

JONES DAY

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